

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, *et al.*,

Plaintiffs,

v.

JASON KESSLER, *et al.*,

Defendants.

CASE No. 3:17-cv-00072

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiffs' unopposed Motion to Voluntarily Dismiss Count IV of the Second Amended Complaint. Dkt. 1238. In Count IV, Plaintiffs Muñiz, Sines, Blair, Martin, Alvarado, Baker, and Romero ("Movant-Plaintiffs") raised a claim for negligence *per se*, against Defendant James Alex Fields, Jr. *See* Dkt. 557 ¶¶ 356–63. In their unopposed motion to voluntarily dismiss this count, Movant-Plaintiffs note that "Fields and many other Defendants have consented to this voluntary dismissal—including Cantwell, Kessler, Damigo, Hill, Tubbs, Heimbach, Parrott, League of the South, Identity Evropa, and Traditionalist Worker Party" Dkt. 1238 at 1. Movant-Plaintiffs seek a Court Order dismissing Count IV pursuant to Fed. R. Civ. P. 41(a)(2), because, while they represent that every non-defaulted Defendant consented to Plaintiffs' dismissal of Count IV, there were several "unresponsive" Defendants for whom Plaintiffs were unable to obtain consent. *See* Dkt. 1238 at 1–2 & n.1.

Rule 41(a)(2) permits voluntary dismissal "at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The "purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced." *Bridge Oil, Ltd. v. Green Pac. A/S*, 321 F. App'x 244, 245 (quoting *Davis v. USX Corp.*, 819 F.2d 1270,

1273 (4th Cir. 1987)). “[T]hus, a district court should grant a Rule 41(a)(2) motion ‘absent plain legal prejudice to the defendant.’” *Id.* (quoting *Ellett Bros., Inc. v. U.S. Fidelity & Guar. Co.*, 275 F.3d 384, 388 (4th Cir. 2001)).

Upon consideration of Plaintiffs’ unopposed motion for voluntary dismissal of Count IV, such Defendants as have consented, and the applicable standards for granting dismissal under Rule 41(a)(2), the Court concludes that dismissal of Count IV would not unfairly prejudice, or result in any “substantial prejudice,” *id.* at 246, to any party in this case. Nor do the factors identified in guiding this analysis weigh against dismissal of Count IV under such circumstances, *see Howard v. Inova Health Care Servs.*, 302 F. App’x 166, 178–79 (4th Cir. 2008), much less outweigh the substantial reasons for granting Plaintiffs’ unopposed request in this regard, which will assist in facilitating a more streamlined decision-making by the jury at trial.

For these reasons, the Court will **GRANT** Plaintiffs’ unopposed motion to voluntarily dismiss Count IV of the Second Amended Complaint. Dkt. 1238. Count IV shall be **dismissed**, *without prejudice. This dismissal only applies as to Count IV.*

It is so **ORDERED**.

The Clerk of Court is directed to send a copy of this Order to all counsel of record.

Entered this 22nd day of October, 2021.


NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE